

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI
BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

I.T.A. No.816/M/2015
Assessment Year: 2008-09

Kaysons Agencies Private Limited, 27, Chottalal Bhavan, Kalbadevi Road, Mumbai-400020.	Vs.	ITO Circle 4(2)(4), Mumbai Aayakar Bhavan, Mumbai-400020.
स्थायी लेखासं. / जी आइ आर सं. / PAN/GIR No. : AAACK4485C		
(Appellant)	..	(Respondent)

Assessee by:	Shri Hari S. Raheja (AR)
Department by:	Ms. N. Hemlatha (DR)

Date of Hearing: 09.07.2018
Date of Pronouncement: 25.07.2018

ORDER

PER AMARJIT SINGH, JM:

The present appeal has been filed by the assessee against the order dated 08.12.2014 passed by the Commissioner of Income Tax (Appeals)-9, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the assessment year 2008-09.

2. The assessee has raised the following grounds: -

1). *On the facts and in the circumstances of the case and in law the CIT(A) erred in upholding the reopening of the assessment u/s 14S of the Income-tax Act, 1961.*

2. *On the facts and in the circumstances of the case and in law the CIT(A) erred in confirming the addition of 10% of the alleged disputed purchases basing his decision on assumptions suspicions*

and surmises that the appellant might have purchased from the local market totally disregarding the letter from the Gupta's that all the transactions made by their three concerns with the appellant were genuine and that they had during the assessment stage confirmed the same.

3. The appellant submits that the C[T(A) has grossly erred in inferring and in concluding that the purchases / delivery could have been from some other part} and that the appellant would thus be liable to an addition / disallowance and an estimation to cover the GP difference in respect of these purchase at 10% of the purchases. '

4. On the facts and in the circumstances of the case and in law the learned CIT(A) has failed to appreciate that there was no material found or seized by the Income Tax Department showing any accommodation for the under appeal and the reliance by the Department on the initial statement of Mr. Gupta which stood retracted during assessment cannot be a ground of making any disallowance / additions in the hands of the appellant,

5. The CIT(A) erred in merely following his decision for the A.Y 2006-07 and in making an estimate of disallowance of 10% of the disputed purchases ignoring the various appellate decisions cited before him.

6. The appellant craves leave to, add to, alter, modify, delete and/or change all or any above grounds or before the hearing of the appeal."

3. The brief facts of the case are that the assessee filed its return of income on 27.09.2008 declaring total income to the tune of Rs.20,36,980/- for the A.Y. 2008-09. The return was processed u/s 143(1) of the Act. Thereafter, the case was selected for scrutiny. Thereafter, the assessment u/s 143(3) of the Act was completed on 10.12.2010 assessing the total income to the tune of Rs.20,82,500/-. Thereafter, notice u/s 148 of the Act dated 26.03.2013 was issued and served upon the assessee. Notice u/s 143(2) and 142(1) of the Act were issued and served upon the assessee. In pursuance of notice the

assessee filed the return of income which he had filed earlier. The case of the assessee reopened on the basis of the following reasons.: -

“The assessee company filed its return of income of Rs.20,36,980/- on 27.09.2008. The return was processed u/s 143(1) of the I.T. Act, 1961, Order u/s 143(3) of the I.T. Act, 1961 was passed on 10.12.2010 determining the total income of Rs.20,82,500/- During the course of survey proceedings u/s 133A conducted on Shri Rakesh Kumar Gupta & Ors on 13.02.2009, it has been found that assessee company has taken bogus bills for purchases from the following parties:

*M/s. Dev Vani Industries- Proprietor-
Niles R Gupta Rs.10,86,893/-*

*M/s. Sainath Textile- Proprietor
Rakesh Kumar Gupta Rs.11,69,446/-*

Moreover, the above parties had confirmed the issuance of accommodation bills to the assessee company during the course of survey u/s 133 conducted on shri Rakesh Kumar Gupta & Ors on 13.02.2009. therefore, I have reasons to believe that income chargeable to tax has escaped assessment.”

4. Thereafter, the total purchase to the tune of Rs.22,56,342/- from the above said two parties was declined and was added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.43,61,410/-. Therefore, the assessee filed an appeal before the CIT(A) who restricted the addition to the extent of 10% of the bogus purchase but the assessee was not satisfied, therefore, the assessee filed the present appeal before us.

ISSUE NO. 1:-

5. Under this issue the assessee has challenged the reopening u/s 148 of the Act. We noticed that this issue has been covered against the

assessee by the order of the Hon'ble ITAT in the assessee's own case for the A.Y. 2005-06 in ITA. No.3812/M/2014 dated 17.03.2017, therefore, in the said circumstances, by honoring the decision (supra) in the assessee's own case, we decide this issue in favour of the revenue.

ISSUE Nos.2, to 5:-

6. Under these issues the assessee has challenged the addition of bogus purchase to the extent of 10%. At the very outset, the Ld. Representative of the assessee has argued that the case has duly been covered by assessee's own case for the A.Y.2005-06 in ITA. No.3812/M/2014 dated 17.03.2017, therefore, in the said circumstances, no addition is liable to be made in accordance with law. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. The copy of order dated 17.03.2017 is on the file. The facts of the present case are quite similar to the said case. Before going further, we deemed it necessary to advert the finding of the Hon'ble ITAT as under.:-

“4.1.As far as the addition with regard to non-genuine purchase is concerned, we want to mention that the FAA has held that there was no doubt about the sales made by the assessee, that the assessee was not given a chance to cross-examine RKG, that the quantity details of the sales and closing stock of not challenged, that no meaningful investigation was done after the survey proceedings at the business premises of RKG, that 10% of the total purchases should be added to the income of the assessee.In our opinion,there was no justification for upholding the addition of 10% of the purchases also.Once the sales and

closing stock details were found to be genuine, then without bringing some positive material on record to prove the unaccounted purchases, no addition should have been made. In the case before us, the supplier i.e. RKG has retracted his statements. Considering the peculiar facts and circumstances of the case, we are of the opinion that the order of the FAA cannot be endorsed. So, reversing the same, we decided second ground of appeal in favour of the assessee."

7. Since the facts of the present case is quite similar to the facts of the case of the assessee's own case for the A.Y.2005-6 in ITA. No.3812/M/2014 dated 17.03.2017, therefore, in the said circumstances, by following the said decision, we set aside the finding of the CIT(A) on this issue and delete the addition. Accordingly, these issues are decided in favour of the assessee against the revenue.

8. In result, appeal filed by the assessee is hereby ordered to be partly allowed.

Order pronounced in the open court on 25.07.2018.

Sd/-

(R. C. SHARMA)

लेखासदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 25.07.2018.

Sd/-

(AMARJIT SINGH)

न्यायिकसदस्य/JUDICIAL MEMBER

v.p. singh

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त (अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai